

EXHITITS LIST

APPENDIX A - D

- 1) Mandate of the Court of Appeals
- 2) 2013 Indictment
- 3) 2014 Indictment
- 4) Order of dismissal of 2013 Indictment

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
www.ca11.uscourts.gov

December 19, 2024

Michael Stapleton
FCI Petersburg Med - Inmate Legal Mail
PO BOX 1000
PETERSBURG, VA 23804

Appeal Number: 24-12801-D
Case Style: Michael Stapleton v. USA
District Court Docket No: 9:23-cv-81082-DMM
Secondary Case Number: 9:14-CR-80151-DMM

The enclosed copy of this Court's order denying the application for a Certificate of Appealability is issued as the mandate of this court. See 11th Cir. R. 41-4. Counsel and pro se parties are advised that pursuant to 11th Cir. R. 27-2, "a motion to reconsider, vacate, or modify an order must be filed within 21 days of the entry of such order. No additional time shall be allowed for mailing."

Any pending motions are now rendered moot in light of the attached order.

Clerk's Office Phone Numbers

General Information:	404-335-6100	Attorney Admissions:	404-335-6122
Case Administration:	404-335-6135	Capital Cases:	404-335-6200
CM/ECF Help Desk:	404-335-6125	Cases Set for Oral Argument:	404-335-6141

Enclosure(s)

DIS-4 Multi-purpose dismissal letter

In the
United States Court of Appeals
For the Eleventh Circuit

No. 24-12801

MICHAEL STAPLETON,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 9:23-cv-81082-DMM

ORDER:

Michael Stapleton moves for a certificate of appealability ("COA") and leave to proceed *in forma pauperis* ("IFP") in order to appeal the denial of his Fed. R. Civ. P. 60(b) motion to reopen his 28 U.S.C. § 2255 proceedings, and denial of his Fed. R. Civ. P. 59(e) motion for reconsideration of that order. To merit a COA, Stapleton must show that reasonable jurists would find debatable both (1) the merits of an underlying claim, and (2) the procedural issues that he seeks to raise. *See* 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 478 (2000). Stapleton's motion for a COA is DENIED because he failed to make the requisite showing, and his motion for leave to proceed IFP is DENIED AS MOOT.


Charles F. Wilson
UNITED STATES CIRCUIT JUDGE

FILED by	TM	D.C.
ELECTRONIC		
Oct 17, 2013		
STEVEN M. LARIMORE CLERK U.S. DIST. CT. S.D. OF FLA. - MIAMI		

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
13-80201-CR-RYSKAMP/HOPKINS
CASE NO.

8 U.S.C. § 1324(a)(1)(A)(v)(I)
8 U.S.C. § 1324(a)(1)(A)(iv)
8 U.S.C. § 1327
8 U.S.C. § 1326(a) and (b)(2)
18 U.S.C. § 982(a)(6)

UNITED STATES OF AMERICA

v.

MICHAEL STAPLETON,
a/k/a "Mike,"
ANDY ROBERT JOHNSON, and
JUAN ALEXANDER VIANA-PATINO,
a/k/a "Juan Alexander Viana-Patino,"
a/k/a "Juan Viana,"
a/k/a "Alex Patino,"

Defendants.

INDICTMENT

The Grand Jury charges that:

COUNT 1

Beginning at least as early as in or around September 2013, the exact date being unknown to the Grand Jury, through on or about September 19, 2013, in Palm Beach County, in the Southern District of Florida, and elsewhere, the defendants,

MICHAEL STAPLETON,
a/k/a "Mike," and
ANDY ROBERT JOHNSON,

did knowingly and willfully conspire, confederate, and agree with each other and other persons known and unknown to the Grand Jury, to commit an offense against the United States, that is, to encourage and induce an alien to come to, enter, and reside in the United States, knowing and in

reckless disregard of the fact that such coming to, entry, and residence is and will be in violation of law, in violation of Title 8, United States Code, Section 1324(a)(1)(A)(iv); all in violation of Title 8, United States Code, Section 1324(a)(1)(A)(v)(I).

COUNTS 2-12

On or about September 19, 2013, in Palm Beach County, in the Southern District of Florida, and elsewhere, the defendants,

**MICHAEL STAPLETON,
a/k/a "Mike," and
ANDY ROBERT JOHNSON,**

did knowingly encourage and induce an alien, as set forth in Counts 2 through 12 below, to come to, enter, and reside in the United States, knowing and in reckless disregard of the fact that such coming to, entry, and residence is and will be in violation of law:

<u>Count</u>	<u>Alien</u>
2	Fidel Antonio Tello-Guzman
3	Francely Arrubla-Alzate
4	Ryswick Valery
5	Alesandro Muneton-Restrepo
6	Wilson Adrian Acevedo-Bedoya
7	Juan Alexander Viana-Patino
8	Anabel Beatriz Jimenez-Benitez
9	Claude Petit-Frere
10	Leslie Bently Cox
11	Charly Johanna Osorio-Jaramillo
12	Olguen Imbert

In violation of Title 8, United States Code, Section 1324(a)(1)(A)(iv) and Title 18, United States Code, Section 2.

COUNT 13

On or about September 19, 2013, in Palm Beach County, in the Southern District of Florida, and elsewhere, the defendants,

**MICHAEL STAPLETON,
a/k/a "Mike," and
ANDY ROBERT JOHNSON,**

did knowingly aid and assist an alien, **JUAN ALEXANDER VIANA-PATINO**, to enter the United States, said alien being inadmissible under Title 8, United States Code, Section 1182(a)(2), as an alien who had been convicted of an aggravated felony, in violation of Title 8, United States Code, Section 1327 and Title 18, United States Code, Section 2.

COUNT 14

~~On or about September 19, 2013, in Palm Beach County, in the Southern District of Florida, the defendant,~~

**JUAN ALEXANDER VIANA-PATINO,
a/k/a "Juan Alexander Viana-Patino,"
a/k/a "Juan Viana,"
a/k/a "Alex Patino,"**

an alien, having previously been removed and deported from the United States on or about May 1, 2012, was found to be in the United States, knowingly and unlawfully, without the Attorney General of the United States or his successor, the Secretary of Homeland Security (Title 6, United States Code, Sections 202(3), 202(4), and 557) having expressly consented to such alien's reapplying for admission to the United States, in violation of Title 8, United States Code, Section 1326(a) and (b)(2).

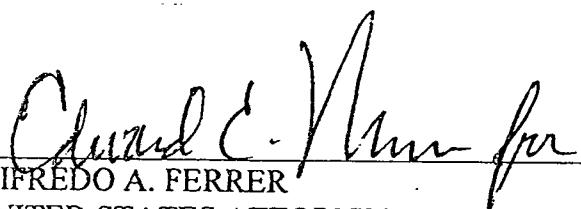
FORFEITURE ALLEGATIONS

Upon conviction of any of the violations alleged in Counts 1 through 12 of this Indictment, the defendants, **MICHAEL STAPLETON** and **ANDY ROBERT JOHNSON**,

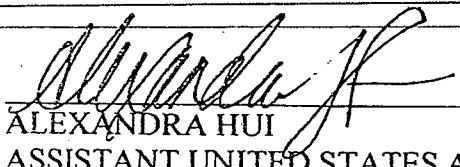
shall forfeit to the United States any conveyance, including any vessel, vehicle, or aircraft, used in the commission of the violation, and any property real or personal that constitutes, or is derived from or is traceable to the proceeds obtained directly or indirectly from the commission of the violation, or that is used to facilitate, or is intended to be used to facilitate, the commission of the violation.

Pursuant to Title 18, United States Code, Section 982(a)(6).

A TRUE BILL


WIFREDO A. FERRER
UNITED STATES ATTORNEY

FOREPERSON


ALEXANDRA HUI
ASSISTANT UNITED STATES ATTORNEY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

PENALTY SHEET

Defendant's Name: MICHAEL STAPLETON, a/k/a "Mike"

Case No:

Count #1:

Conspiracy to encourage and induce an alien to enter the United States

Title 8, United States Code, Section 1324(a)(1)(A)(v)(I)

*Max. Penalty: Ten years' imprisonment; \$250,000 fine; three years' supervised release

Counts #2-12:

Encouraging and inducing an alien to enter the United States

Title 8, United States Code, Section 1324(a)(1)(A)(iv)

*Max. Penalty: Five years' imprisonment; \$250,000 fine; three years' supervised release

Count #13:

Aiding and assisting certain aliens to enter the United States

Title 8, United States Code, Section 1327

*Max. Penalty: Ten years' imprisonment; \$250,000 fine; three years' supervised release

***Refers only to possible term of incarceration, does not include possible fines, restitution, special assessments, parole terms or forfeitures that may be applicable.**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

PENALTY SHEET

Defendant's Name: ANDY ROBERT JOHNSON

Case No:

Count #1:

Conspiracy to encourage and induce an alien to enter the United States

Title 8, United States Code, Section 1324(a)(1)(A)(v)(I)

*Max. Penalty: Ten years' imprisonment; \$250,000 fine; three years' supervised release

Counts #2-12:

Encouraging and inducing an alien to enter the United States

Title 8, United States Code, Section 1324(a)(1)(A)(iv)

*Max. Penalty: Five years' imprisonment; \$250,000 fine; three years' supervised release

Count #13:

Aiding and assisting certain aliens to enter the United States

Title 8, United States Code, Section 1327

*Max. Penalty: Ten years' imprisonment; \$250,000 fine; three years' supervised release

***Refers only to possible term of incarceration, does not include possible fines, restitution, special assessments, parole terms or forfeitures that may be applicable.**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

PENALTY SHEET

Defendant's Name: JUAN ALEXANDER VIANA-PATINO, a/k/a "Juan Alexander

Viana-Patino," a/k/a "Juan Viana," a/k/a "Alex Patino"

Case No:

Count #1:

Reentry after deportation

Title 8, United States Code, Section 1326(a) and (b)(2)

*Max. Penalty: Twenty years' imprisonment; \$250,000 fine; three years' supervised release

***Refers only to possible term of incarceration, does not include possible fines, restitution, special assessments, parole terms or forfeitures that may be applicable.**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
14-80151-CR-RYSKAMP/HOPKINS
CASE NO.

8 U.S.C. § 1324(a)(1)(A)(v)(I)
8 U.S.C. § 1324(a)(1)(A)(iv)
8 U.S.C. § 1324(a)(2)(B)(ii)
8 U.S.C. § 1327
18 U.S.C. § 982(a)(6)

FILED by KZ D.C.
RECEIVED

Sep 4, 2014

STEVEN M. LARIVORE
CLERK, U.S. DIST. CT.
S.D. OF FLA. - MIAMI

UNITED STATES OF AMERICA

v.

MICHAEL STAPLETON,
a/k/a "Mike,"

Defendant.

INDICTMENT

The Grand Jury charges that:

COUNT 1

From in or about November 2012, the exact date being unknown to the Grand Jury, through on or about December 9, 2012, in Palm Beach County, in the Southern District of Florida, and elsewhere, the defendant,

MICHAEL STAPLETON,
a/k/a "Mike,"

did knowingly and willfully conspire, confederate, and agree with other persons known and unknown to the Grand Jury, to commit an offense against the United States, that is, to encourage and induce an alien to come to, enter, and reside in the United States, knowing and in reckless disregard of the fact that such coming to, entry, and residence is and will be in violation of law, in violation of Title 8, United States Code, Section 1324(a)(1)(A)(iv); all in violation of Title 8, United States Code, Section 1324(a)(1)(A)(v)(I).

COUNT 2

From on or about October 5, 2013, through on or about October 10, 2013, in Palm Beach County, in the Southern District of Florida, and elsewhere, the defendant,

**MICHAEL STAPLETON,
a/k/a "Mike,"**

did knowingly and willfully conspire, confederate, and agree with other persons known and unknown to the Grand Jury, to commit an offense against the United States, that is, to encourage and induce an alien to come to, enter, and reside in the United States, knowing and in reckless disregard of the fact that such coming to, entry, and residence is and will be in violation of law, in violation of Title 8, United States Code, Section 1324(a)(1)(A)(iv); all in violation of Title 8, United States Code, Section 1324(a)(1)(A)(v)(I).

COUNTS 3-24

On or about the dates set forth below with respect to each count, in Palm Beach County, in the Southern District of Florida, and elsewhere, the defendant,

**MICHAEL STAPLETON,
a/k/a "Mike,"**

did knowingly encourage and induce an alien, as set forth in Counts 3 through 24 below, to come to, enter, and reside in the United States, knowing and in reckless disregard of the fact that such coming to, entry, and residence is and will be in violation of law:

<u>Count</u>	<u>Date</u>	<u>Alien</u>
3	December 9, 2012	Jeannot Destine
4	December 9, 2012	Cristian Camilo Gil-Puerta
5	December 9, 2012	Jose Maria Lino
6	December 9, 2012	Mara Yara Lecadio-Rodrigues
7	December 9, 2012	Julian Melguizo Botero

8	December 9, 2012	Valery Melus
9	December 9, 2012	Jhon Fredy Moreno-Garcia
10	December 9, 2012	Steve Anthony Rittie
11	December 9, 2012	Diana Marcela Rojas
12	December 9, 2012	Wisky Saintil
13	December 9, 2012	Jermaine Senior
14	October 10, 2013	Venel Albert
15	October 10, 2013	Juan Pablo Cabrera-Carrasco
16	October 10, 2013	Dana Da Costa-Neves
17	October 10, 2013	Silvania De Oliveras Silva Nunes
18	October 10, 2013	Miller Honore
19	October 10, 2013	Zakari Jean
20	October 10, 2013	Michele Leandro-Pacheco
21	October 10, 2013	Yvenais Mergilus
22	October 10, 2013	Maria Transito Morocho-Guaman
23	October 10, 2013	Natasha Pierre
24	October 10, 2013	Geicy Viera Souza

In violation of Title 8, United States Code, Section 1324(a)(1)(A)(iv) and (v)(II), and Title 18, United States Code, Section 2.

COUNTS 25-46

On or about the dates set forth below with respect to each count, in Palm Beach County, in the Southern District of Florida, and elsewhere, the defendant,

**MICHAEL STAPLETON,
a/k/a "Mike,"**

did knowingly bring, and attempt to bring, an alien, as set forth in Counts 25-46 below, to the United States for the purpose of commercial advantage and private financial gain, knowing and in reckless disregard of the fact that such alien had not received prior official authorization to

come to, enter, and reside in the United States, regardless of any official action which might later be taken with respect to such alien:

<u>Count</u>	<u>Date</u>	<u>Alien</u>
25	December 9, 2012	Jeannot Destine
26	December 9, 2012	Cristian Camilo Gil-Puerta
27	December 9, 2012	Jose Maria Lino
28	December 9, 2012	Mara Yara Lecadio-Rodrigues
29	December 9, 2012	Julian Melguizo Botero
30	December 9, 2012	Valery Melus
31	December 9, 2012	Jhon Fredy Moreno-Garcia
32	December 9, 2012	Steve Anthony Rittie
33	December 9, 2012	Diana Marcela Rojas
34	December 9, 2012	Wisky Saintil
35	December 9, 2012	Jermaine Senior
36	October 10, 2013	Venel Albert
37	October 10, 2013	Juan Pablo Cabrera-Carrasco
38	October 10, 2013	Dana Da Costa-Neves
39	October 10, 2013	Silvania De Oliveras Silva Nunes
40	October 10, 2013	Miller Honore
41	October 10, 2013	Zakari Jean
42	October 10, 2013	Michele Leandro-Pacheco
43	October 10, 2013	Yvenais Mergilus
44	October 10, 2013	Maria Transito Morocho-Guaman
45	October 10, 2013	Natasha Pierre
46	October 10, 2013	Geicy Viera Souza

In violation of Title 8, United States Code, Section 1324(a)(2)(B)(ii) and Title 18, United States Code, Section 2.

COUNT 47

On or about December 9, 2012, in Palm Beach County, in the Southern District of Florida, and elsewhere, the defendant,

MICHAEL STAPLETON,
a/k/a "Mike,"

did knowingly aid and assist an alien, STEVE ANTHONY RITTIE, to enter the United States, said alien being inadmissible under Title 8, United States Code, Section 1182(a)(2), as an alien who had been convicted of an aggravated felony, in violation of Title 8, United States Code, Section 1327 and Title 18, United States Code, Section 2.

FORFEITURE ALLEGATIONS

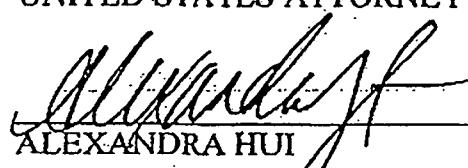
Upon conviction of any of the violations alleged in Counts 1 through 47 of this Indictment, the defendant, MICHAEL STAPLETON, a/k/a "Mike," shall forfeit to the United States any conveyance, including any vessel, vehicle, or aircraft, used in the commission of the violation, and any property real or personal that constitutes, or is derived from or is traceable to the proceeds obtained directly or indirectly from the commission of the violation, or that is used to facilitate, or is intended to be used to facilitate, the commission of the violation

Pursuant to Title 18, United States Code, Section 982(a)(6).

A TRUE BILL

FOREPERSON


WIFREDO A. FERRER
UNITED STATES ATTORNEY


ALEXANDRA HUI
ASSISTANT UNITED STATES ATTORNEY

UNITED STATES OF AMERICA

vs.

MICHAEL STAPLETON,
DefendantCASE NO. 14-80151-CR-HYSKAMP/HOPKINS

CERTIFICATE OF TRIAL ATTORNEY*

Court Division: (Select One)

Miami Key West WPB FTP

Superseding Case Information:

New Defendant(s) YES NO
Number of New Defendants
Total number of counts

I do hereby certify that:

- I have carefully considered the allegations of the indictment, the number of defendants, the number of probable witnesses and the legal complexities of the Indictment/Information attached hereto.
- I am aware that the information supplied on this statement will be relied upon by the Judges of this Court in setting their calendars and scheduling criminal trials under the mandate of the Speedy Trial Act, Title 28 U.S.C. Section 3161.

3. Interpreter: (Yes or No) No
List language and/or dialect _____

4. This case will take 3-5 days for the parties to try.

5. Please check appropriate category and type of offense listed below:

(Check only one)

(Check only one)

I	0 to 5 days	<input checked="" type="checkbox"/>	Petty	<input type="checkbox"/>
II	6 to 10 days	<input type="checkbox"/>	Minor	<input type="checkbox"/>
III	11 to 20 days	<input type="checkbox"/>	Misdem.	<input type="checkbox"/>
IV	21 to 60 days	<input type="checkbox"/>	Felony	<input checked="" type="checkbox"/>
V	61 days and over	<input type="checkbox"/>		

6. Has this case been previously filed in this District Court? (Yes or No) No

If yes:

Judge: _____ Case No. _____

(Attach copy of dispositive order)

Has a complaint been filed in this matter? (Yes or No)

NO

If yes: Magistrate Case No. _____

Related Miscellaneous numbers:

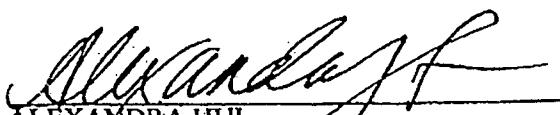
Defendant(s) in federal custody as of _____

N/A _____

Defendant(s) in state custody as of _____

Rule 20 from the _____

District of _____

Is this a potential death penalty case? (Yes or No) Yes No 7. Does this case originate from a matter pending in the Northern Region of the U.S. Attorney's Office prior to October 14, 2003? Yes No8. Does this case originate from a matter pending in the Central Region of the U.S. Attorney's Office prior to September 1, 2007? Yes No

 ALEXANDRA HUI
 ASSISTANT UNITED STATES ATTORNEY
 Court No. A5501746

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

PENALTY SHEET

Defendant's Name: MICHAEL STAPLETON, a/k/a "Mike"

Case No: 14-80151-CR-RYSKAMP/HOPKINS

Counts #1-2:

Conspiracy to encourage and induce an alien to enter the United States

Title 8, United States Code, Section 1324(a)(1)(A)(v)(I)

*Max. Penalty: Ten years' imprisonment; \$250,000 fine; three years' supervised release

Counts #3-24:

Encouraging and inducing an alien to enter the United States

Title 8, United States Code, Section 1324(a)(1)(A)(iv)

*Max. Penalty: Five years' imprisonment; \$250,000 fine; three years' supervised release

Counts #25-46:

Bringing/attempting to bring an alien into the United States for commercial advantage
or financial gain

Title 8, United States Code, Section 1324(a)(2)(B)(ii)

*Max. Penalty: Three to ten years' imprisonment for the first or second violation, and five to
fifteen years' imprisonment for any other violation; \$250,000 fine; three years' supervised
release

Count #47:

Aiding and assisting certain aliens to enter the United States

*Refers only to possible term of incarceration, does not include possible fines, restitution, special
assessments, parole terms or forfeitures that may be applicable.

Title 8, United States Code, Section 1327

*Max. Penalty: Ten years' imprisonment; \$250,000 fine; three years' supervised release

***Refers only to possible term of incarceration, does not include possible fines, restitution, special assessments, parole terms or forfeitures that may be applicable.**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 13-80201-CR-UNGARO

UNITED STATES OF AMERICA,

vs.

MICHAEL STAPLETON,

Defendant.

ORDER FOR DISMISSAL

Pursuant to Rule 48(a) of the Federal Rules of Criminal Procedure, and by leave of Court endorsed hereon, the United States Attorney for the Southern District of Florida hereby dismisses without prejudice the Indictment against the above-named defendant.

Respectfully submitted,

Ariana Fajardo Orshan
ARIANA FAJARDO ORSHAN
UNITED STATES ATTORNEY

cc: Philip Jones, SAUSA
U.S. Marshal
Chief Probation Officer
Pretrial Services

Leave of Court is granted for the filing of the foregoing Dismissal.

DATE: February 21, 2019

Ursula Ungaro
HON. URSULA UNGARO
UNITED STATES DISTRICT JUDGE

ORDER ON RULE 59(e) MOTION
ORDER ON RULE 60(b) MOTION

EXHIBIT E-F

WRIT OF CERTIORARI

APPENDIX

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 23-81082-CV-MIDDLEBROOKS

MICHAEL STAPLETON,

Movant,

v.

UNITED STATES OF AMERICA,

Respondent.

ORDER DENYING MOVANT'S MOTION FOR RECONSIDERATION

THIS CAUSE comes before the Court on the *pro se* "Consolidated Motions Under Rule 60(b)(1) and (4)" ("Rule 60(b) Motion") filed by Movant Michael Stapleton ("Movant") and docketed by the Clerk of Court on August 8, 2024. (DE 46). For the reasons set forth below, the Rule 60(b) Motion is DENIED.

I. BACKGROUND

Movant filed this Motion to Vacate pursuant to 28 U.S.C. § 2255 ("§ 2255 Motion") (DE 1) with Amended Motion (DE 19), challenging his convictions and sentences entered following a jury verdict on forty-seven (47) counts relating to his role in smuggling aliens into the United States. *See United States v. Stapleton*, No. 9:14-cr-80151-DMM (S.D. Fla. 2014). On December 18, 2023, I entered an Order denying the Movant's Motions. (DE 28). On that same date, I entered Final Judgment in favor of the Respondent. (DE 29). On January 2, 2024, Movant filed a notice of appeal, appealing the denial of his § 2255 Motions. (DE 30). On January 25, 2024, Movant filed motions to proceed *in forma pauperis* on appeal ("IFP Motions"). (DE 36; DE 37). On February 14, 2024, I entered an Order denying Movant's IFP Motions. (DE 43). On

August 8, 2024, Movant has filed a Rule 60(b) Motion presently before me for consideration. (DE 46). Therein, Movant claims he is “not attempting to raise new claims or challenge the district court’s merit analysis on the claims raised that has been resolved.” (*Id.* at 1). Movant maintains, however, that I failed to analyze Ground Two of his § 2255 Motion, in which Movant raised a *Brady* claim, alleged the Government suborned perjury, and made improper remarks during closing arguments. (*Id.* at 1; *see also* DE 1 at 4). Careful review of my Order denying Movant’s § 2255 Motions, reveals that I specifically addressed Movant’s claims raised under Ground Two. (DE 28 at 9–18). For the first time, Movant now attempts to challenge the Court’s jurisdiction over this § 2255 proceeding, and to do so, he reiterates the arguments previously raised and rejected by me. (DE 46 at 2).

II. APPLICABLE LAW

A litigant may move for reconsideration pursuant to Rule 59(e) or Rule 60(b) of the Federal Rules of Civil Procedure. Under Rule 59(e), reconsideration is proper when there is: (1) newly discovered evidence; (2) an intervening change in controlling law; or, (3) a need to correct a clear error of law or fact or prevent manifest injustice. *See Bd. of Trs. of Bay Med. Ctr. v. Humana Mil. Healthcare Servs., Inc.*, 447 F.3d 1370, 1377 (11th Cir. 2006) (citation omitted). Similarly, under Rule 60(b), relief from a final order is appropriate based on:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud . . . misrepresentation, or other misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged; it is based on the earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or

(6) any other reason that justifies relief.

To prevail on a motion to reconsider, the moving party must demonstrate why the court should reverse its prior decision by setting forth facts or law of a strongly convincing nature. A motion to reconsider should not be used as a vehicle "to relitigate old matters, raise argument or present evidence that could have been raised prior to the entry of judgment." *Michael Linet, Inc. v. Vill. of Wellington, Fla.*, 408 F.3d 757, 763 (11th Cir. 2005).

III. DISCUSSION

Movant seeks reconsideration of this Section 2255 proceeding to raise arguments previously rejected by me or attempts to raise new claims which could have been, but were not previously raised. None of the reasons for reopening of this case come within any of the above-enumerated Rule 59 or Rule 60(b) grounds. Movant does not offer any new evidence not previously considered, and merely seeks reconsideration of the § 2255 Motions.

IV. CERTIFICATE OF APPEALABILITY

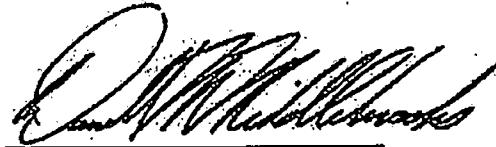
The Eleventh Circuit has held that the denial of a Rule 59 or Rule 60(b) motion is a "final order" in a habeas corpus proceeding and requires a Certificate of Appealability before an appeal may proceed. *See* 28 U.S.C. § 2253(c)(1); *Perez v. Sec'y, Fla. Dep't of Corr.*, 711 F.3d 1263, 1264 (11th Cir. 2013)(citations omitted); *see also Gonzalez v. Sec'y for the Dep't of Corr.*, 366 F.3d 1253, 1263-64 (11th Cir. 2004) (en banc) (concluding that the denial of a Fed.R.Civ.P. 60(b) motion constitutes a "final order" under section 2253(c)(1) and, thus, requires a COA). Upon consideration of the Motion and the record as a whole, a certificate of appealability shall not issue.

V. CONCLUSION

Because I find Movant's reasons for reconsideration are not appropriate in this case as they do not come within any of the above-enumerated grounds for reconsideration, it is

ORDERED AND ADJUDGED that Petitioner's Rule 60(b) Motion (DE 46) is **DENIED**, and no appealability shall issue.

SIGNED in West Palm Beach, Florida, on this 9th day of August, 2024.



Donald M. Middlebrooks
United States District Judge

Copies furnished to:

Michael Stapleton, *Pro Se*
Reg. No. 17627-104
Federal Correctional Institution-Petersburg Med.
Inmate Mail/Parcels
Post Office Box 1000
Petersburg, VA 23804

Alicia E. Shick, AUSA
United States Attorney's Office
500 E Broward Boulevard, 7th Floor
Fort Lauderdale, FL 33394
Email: alicia.shick@usdoj.gov

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 23-81082-CV-MIDDLEBROOKS

MICHAEL STAPLETON,

Movant,

v.

UNITED STATES OF AMERICA,

Respondent.

ORDER DENYING MOVANT'S MOTIONS FOR RECONSIDERATION

THIS CAUSE comes before the Court on two *pro se* Motions for Reconsideration (“Second Motion” and “Third Motion”, jointly the “Motions”) filed by Movant Michael Stapleton (“Movant”) and docketed by the Clerk of Court on August 26, 2024. (DE 50; DE 56). For the reasons set forth below, the Motions are DENIED.

I. BACKGROUND

Movant filed a *pro se* Second Amended Motion to Vacate pursuant to 28 U.S.C. § 2255 (“Second Amended § 2255 Motion”) (DE 23-1) with supporting Second Amended Memorandum of Law (DE 23-2) (“Second Amended Memorandum”), challenging his convictions and sentences entered following a jury verdict on forty-seven (47) counts relating to his role in smuggling aliens into the United States. *See United States v. Stapleton*, No. 9:14-cr-80151-DMM (S.D. Fla. 2014). On December 18, 2023, I entered an Order denying the Movant’s § 2255 Motions. (DE 28). On that same date, I entered Final Judgment in favor of the Respondent. (DE 29). On January 2, 2024, Movant filed a notice of appeal, appealing the denial of his § 2255 Motions. (DE 30). On January 25, 2024, Movant filed motions to proceed *in forma pauperis* on appeal (“IFP Motions”).

(DE 36; DE 37). On February 14, 2024, I entered an Order denying Movant's IFP Motions.

(DE 43). On August 8, 2024, Movant filed a motion for reconsideration brought pursuant to Fed.

R. Civ. P. 60(b) ("First Rule 60(b) Motion") claiming that I failed to address the merits of Ground

Two of his § 2255 Motion (DE 23-1), in which Movant raised a Brady claim, alleged the

Government suborned perjury, and made improper remarks during closing arguments. (DE 46;

see also DE 1 at 4). Careful review of my Order denying Movant's § 2255 Motions, reveals that

I specifically addressed Movant's claims raised under Ground Two. (DE 28 at 9-18). As a result,

on August 12, 2024, I entered an Order denying Movant's First Rule 60(b) Motion. (DE 49).

On August 26, 2024, Movant filed the two Motions presently before me. (DE 50; DE 56).

In the Second Motion (DE 50), Movant states that he seeks to "clarify" that he is not "[c]hallenging any decisions" I "presided over," only my "[a]ctions . . . leading up to [my] rulings." (*Id.* at 1).

According to the Movant, during a "status conference" in his criminal case,¹ I threatened or coerced him to abandon his "[p]ublic authority defense, and not to appoint an attorney or seeks a continuance." (*Id.* at 1-2). Movant reiterates that he is not challenging my rulings in the criminal case, but what I purportedly did "to benefit the government." *Id.* at 2). In his Second Motion, Movant asserts that I am attempting to "distort the facts" because I have "no plans of giving Movant relief." (DE 56 at 1). In support, Movant reiterates that I failed to adjudicate the substantive claims raised under ground two of his Second Amended § 2255 Motion. (*Id.*).

II. APPLICABLE LAW

A litigant may move for reconsideration pursuant to Rule 59(e) or Rule 60(b) of the Federal Rules of Civil Procedure. Under Rule 59(e), reconsideration is proper when there is: (1) newly discovered evidence; (2) an intervening change in controlling law; or (3) a need to correct a clear

¹ See *United States v. Stapleton*, No. 9:14-cr-80151-DMM-1 (S.D. Fla.

error of law or fact or prevent manifest injustice. See Bd. of Trs. of Bay Med. Ctr. v. Humana Mil. Healthcare Servs., Inc., 447 F.3d 1370, 1377 (11th Cir. 2006) (citation omitted). Similarly, under Rule 60(b), relief from a final order is appropriate based on:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud . . . misrepresentation, or other misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged; it is based on the earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

To prevail on a motion to reconsider, the moving party must demonstrate why the court should reverse its prior decision by setting forth facts or law of a strongly convincing nature. A motion to reconsider should not be used as a vehicle "to relitigate old matters, raise argument or present evidence that could have been raised prior to the entry of judgment." *Michael Linet, Inc. v. Vill. of Wellington, Fla.*, 408 F.3d 757, 763 (11th Cir. 2005).

III. DISCUSSION

Construed liberally, Movant seeks reconsideration of my Order (DE 48) denying his Motion to Recuse (DE 47) and my Order (DE 28) denying his Second Amended § 2255 Motion (DE 23-1). None of the arguments for reopening and reconsidering the merits of my Orders (DE 28; DE 48) come within any of the above-enumerated Rule 59 or Rule 60(b) grounds. Movant does not offer any new evidence not previously considered, and merely seeks reconsideration of my rulings or the events leading up to my rulings.

IV. CERTIFICATE OF APPEALABILITY

The Eleventh Circuit has held that the denial of a Rule 59 or Rule 60(b) motion is a “final order” in a habeas corpus proceeding and requires a Certificate of Appealability before an appeal may proceed. *See 28 U.S.C. § 2253(c)(1); Perez v. Sec'y, Fla. Dep't of Corr.*, 711 F.3d 1263, 1264 (11th Cir. 2013)(citations omitted); *see also Gonzalez v. Sec'y for the Dep't of Corr.*, 366 F.3d 1253, 1263–64 (11th Cir.2004) (en banc) (concluding that the denial of a Fed.R.Civ.P. 60(b) motion constitutes a “final order” under section 2253(c)(1) and, thus, requires a COA). Upon consideration of the Motion and the record as a whole, a certificate of appealability shall not issue.

V. CONCLUSION

Because I find Movant's reasons for reconsideration are not appropriate in this case as they do not come within any of the above-enumerated grounds for reconsideration, it is

ORDERED AND ADJUDGED that Petitioner's Motions (DE 50; DE 56) are **DENIED**, and no appealability shall issue.

SIGNED in West Palm Beach, Florida, on this 3rd day of September, 2024.



Donald M. Middlebrooks
United States District Judge

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Michael Stapleton, *Pro Se*
Reg. No. 17627-104
Federal Correctional Institution-Petersburg Med.
Inmate Mail/Parcels
Post Office Box 1000
Petersburg, VA 23804